

# United States Court of Appeals

Eleventh Circuit  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

Thomas K. Kahn  
Clerk

In Replying Give Number  
Of Case and Names of Parties

November 15, 2005

**VIA FACSIMILE**

TO ALL COUNSEL OF RECORD

Re: No. 04-13210 - Tanner Advertising Group, L.L.C. v. Fayette County, Georgia

Dear Counsel:

For the purposes of the upcoming en banc rehearing in the above-referenced case, the court desires for counsel to focus their briefs on the following issues:

- 1. Does the Supreme Court's holding in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 112 S. Ct. 2130 (1992), limit the overbreadth doctrine to allow facial challenges only to specific sections of a statute where an injury-in-fact has been suffered?**
- 2. If the overbreadth doctrine is to be interpreted broadly, to allow a litigant facially to challenge (on behalf of third parties) provisions that have not caused that actual litigant any injury, what, if any, are the limiting principles? See *Virginia v. Hicks*, 539 U.S. 113, 119-20, 123 S. Ct. 2191, 2196-97 (2003) (expressing concern about overapplication of overbreadth doctrine, then (unfortunately) not addressing the issue).**
- 3. What is the relationship between severability and the overbreadth doctrine?**

Appellant's opening brief shall be filed in the Clerk's Office in Atlanta by 5:00 p.m., Thursday, December 15, 2005. Appellee's opening brief shall be filed in the Clerk's Office in Atlanta by 5:00 p.m., Friday, January 13, 2006. Any reply brief by the Appellants must be filed in the Clerk's Office in Atlanta by **3:00 p.m.**, Friday, January 27, 2006. **NO EXTENSIONS WILL BE GRANTED.** An original and 18 copies of the en banc briefs should be filed (appellants' in blue covers, appellee's in red covers and any reply in gray covers). The parties are expected to insure that all other parties receive a copy of their briefs before the close of business on the day of filing (facsimile, e-mail, etc.). **NO TIME FOR MAILING SHALL BE ALLOWED.** Any amicus curiae briefs are due on the due date of the principal parties and participation by amicus curiae must be permitted by the en banc court. All parties are also required to upload the brief in electronic format to the court's Web site as described in 11th Cir. R. 31-5.

\_\_\_\_\_ **All counsel** are requested to file 16 copies of their opening panel briefs, record excerpts and supplemental authorities prior to 5:00 p.m., Thursday, December 15, 2005.

The case will be argued before the Court sitting en banc during the week of February 13, 2006, in Atlanta, Georgia. Counsel will be allotted 20 minutes per side for oral argument. Counsel will receive a calendar notifying of the specific date and time of oral arguments at a later date.

Thank you for your attention to this matter.

Sincerely,

THOMAS K. KAHN, Clerk

By: \_\_\_\_\_

Matt Davidson  
Calendar Clerk/Court Sessions Supervisor  
404.335.6131

Edward Adam Webb 770.444.0271  
Dennis A. Davenport 770.719.4832